

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES MARTIN,

Petitioner,

No. CIV S-99-0223 WBS GGH P

vs.

S.L. HUBBARD, et al.,

Respondents.

ORDER and

FINDINGS AND RECOMMENDATIONS

_____/

By order, filed on May 23, 2011, petitioner was directed to show cause why this case should not be closed in light of the Supreme Court's reversal of the Ninth Circuit's judgment in this matter. See Walker v. Martin, ___ U.S. ___, 131 S. Ct. 1120 (Feb. 23, 2011). Petitioner's abbreviated response was simply to submit the matter. See docket # 127.

Following the initial remand from the Ninth Circuit, the only claims that remained to be adjudicated were those for which the Ninth Circuit had determined that respondent had not met its burden to show the adequacy of California's timeliness rule, i.e., those claims which the district court had found procedurally barred. See docket # 82. When the district court thereafter ruled that "[t]he California timeliness bar in inter alia Clark/Robbins is clearly defined, well established and consistently applied," the Ninth Circuit, on petitioner's subsequent appeal, reversed and remanded for a merits determination. See docket # 104, # 108, # 119. A temporary

1 stay was imposed on June 24, 2010, pending the outcome of respondent's petition for writ of
2 certiorari before the United States Supreme Court. See Order at docket # 125. In Walker, the
3 Supreme Court found "no inadequacy in California's timeliness rule generally or as applied in
4 Martin's case." 131 S. Ct. at 1131. As no other claims, except those which sought to implicate
5 California's timeliness bar, remained in this matter, this court now recommends dismissal of the
6 those claims and that this case be closed.

7 Accordingly, IT IS ORDERED that:

8 1. The temporary stay in this matter (docket # 125) has been lifted as the Supreme
9 Court's decision in Walker v. Martin, ___ U.S. ___, 131 S. Ct. 1120 (Feb. 23, 2011), has been
10 rendered; and

11 2. Petitioner's response at docket # 127 has discharged the show cause order at
12 docket # 126.

13 Accordingly, IT IS HEREBY RECOMMENDED that the remaining claims,
14 which the Supreme Court has found to be procedurally barred, reversing the Ninth Circuit's
15 decision, be dismissed and this case be closed.

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
18 days after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
21 shall be served and filed within fourteen days after service of the objections. The parties are
22 advised that failure to file objections within the specified time may waive the right to appeal the
23 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 DATED: September 16, 2011

25 /s/ Gregory G. Hollows
26 UNITED STATES MAGISTRATE JUDGE

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